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Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
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Attorney for Division of Consumer Affairs

**FILED**

AUG 30 2010

**Division of Consumer Affairs**

By: Gina M. Betts  
Deputy Attorney General  
(973) 648-3070

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS

In the Matter of

AMERICAN SIGNATURE, INC.

Respondent.

Administrative Action

**CONSENT ORDER**

**WHEREAS** this matter having been opened by the New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division"), as an investigation to ascertain whether violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA"), the Regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq., ("CFA Regulations"), specifically the Regulations Governing the Delivery of Household Furniture and Furnishings, N.J.A.C. 13:45A-5.1 et seq. ("Furniture Regulations"), have been or are being committed by American Signature, Inc., a Ohio Corporation with its Corporate Headquarters located at 4300 E. 5<sup>th</sup> Avenue, Columbus, Ohio

43219, and a New Jersey principal place of business located at 1001 Nixon Drive, Moorestown, New Jersey 08057 (“Respondent”), (hereinafter referred to as the “Investigation”); and

**WHEREAS** the Division found that Respondent’s contract forms and/or sales documents did not comply with the Furniture Regulations due to the failure to include the language regarding promised delivery date required by N.J.A.C. 13:45A-5.2(a) and the language regarding delayed delivery required by N.J.A.C. 13:45A-5.3 (a);

**WHEREAS** Respondent denies that it has committed any violation of the CFA and/or the CFA Regulations; and

**WHEREAS** the Division and Respondent (collectively, the “Parties”) have reached an amicable agreement thereby resolving the issues in controversy and concluding this matter without the need for further action, and Respondent having voluntarily cooperated with the Investigation and consented to the entry of the within order (“Consent Order”) and for good cause shown,

**IT IS HEREBY ORDERED AND AGREED** as follows:

**1. EFFECTIVE DATE**

1.1 This Consent Order shall be effective on the date that it is filed with the Division (“Effective Date”).

**2. DEFINITIONS**

As used in this Consent Order, the following capitalized words or terms shall have the following meanings unless otherwise specifically indicated:

2.1 “ADR Unit” shall refer to the Alternative Dispute Resolution Unit of the Division.

2.2 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of the Attorney General of the State of New Jersey.

2.3 “CALA” shall refer to the Consumer Affairs Local Assistance officer within the counties and/or municipalities in the State.

2.4 “Consumer” shall refer to any Person who is offered Merchandise for Sale.

2.5 “Household Furniture” shall be defined in accordance with N.J.A.C. 13:45A-5.1(d).

2.6 “Merchandise” shall be defined in accordance with N.J.S.A. 56:8-1(c) and includes, but is not limited to, Household Furniture.

2.7 “Person” shall be defined in accordance with N.J.S.A. 56:8-1(d).

2.8 “Restitution” shall refer to all methods undertaken by Respondent to resolve Consumer complaints, including, but not limited to, the issuance of credits or refunds or the reversal of credit card and/or debit card charges.

2.9 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e).

2.10 “State” means the State of New Jersey.

### **3. BUSINESS PRACTICES AND INJUNCTIVE RELIEF**

3.1 Respondent shall not engage in any unfair acts or deceptive practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations, as now constituted or as may hereafter be amended, including, but not limited to, the CFA and the Furniture Regulations.

3.2 Respondent shall include in all contract forms and/or sales documents for Household Furniture the date of the order as well as the following sentence in ten-point bold face type, as required by N.J.A.C. 13:45A-5.2(a): **“The merchandise you have ordered is promised for delivery to you on or before (insert date or length of time agreed upon).**

3.3 Respondent shall include on the first page of all contract forms and/or sales documents for Household Furniture the following notice in ten-point bold face type, as required by N.J.A.C. 13:45A-5.3(a):

**If the merchandise ordered by you is not delivered by the promised delivery date, (insert name of the seller) must offer you the choice of (1) canceling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.**

#### 4. FUTURE CONSUMER COMPLAINTS

4.1 For a period of one (1) year from the Effective Date, the Division shall forward to Respondent any Consumer complaints received by the Division or forwarded to the Division, among other things, by any CALA office. The Division shall forward to Respondent the Consumer complaint within thirty (30) days of the Division's receipt thereof.

4.2. During this one (1) year period, the Division shall notify each Consumer in writing, with a copy to Respondent's designate, of the following: (a) that the Consumer's complaint has been forwarded to Respondent; (b) that he/she should expect a response from Respondent within thirty (30) days; and (c) the right to refer his/her complaint to the ADR Unit of the Division for binding arbitration if Respondent disputes the Consumer's complaint and/or requested relief.

4.3. Within thirty (30) days of receiving the Consumer's complaint from the Division, Respondent shall send a written response to each Consumer, with a copy to the following: New Jersey Division of Consumer Affairs, Office of Consumer Protection, Case Management Tracking Supervisor, 124 Halsey Street, P.O. Box 45025, Newark, New Jersey 07101.

4.4 If Respondent does not dispute the Consumer's complaint and requested relief, the

Respondent's written response shall so inform the Consumer. Respondent shall contemporaneously provide Restitution to the Consumer. Where Restitution concerns the reversal of credit or debit card charges, Respondent shall include documents evidencing that such adjustments have been made. Where Restitution concerns a refund or other payment, such shall be made by certified check, money order or company business check made payable to the Consumer.

4.5 If Respondent disputes the Consumer's complaint and/or the requested relief, Respondent's written response shall include copies of all documents concerning Respondent's dispute of the Consumer's complaint.

4.6 Within forty-five (45) days of Respondent's receipt of the Consumer's complaint, Respondent shall notify the Division as to whether such Consumer's complaint has been resolved. Such notification shall include the following:

- (a) The name and address of the Consumer;
- (b) Whether or not the Consumer's complaint has been resolved;
- (c) An identification of any Restitution provided to the Consumer;
- (d) Copies of all documents evidencing any Restitution;
- (e) In the event Respondent's written response was returned as undeliverable, the efforts Respondent had undertaken to locate the Consumer; and
- (f) Confirmation that Respondent sent all mailings to the Consumer as required by this Section.

Following the Division's receipt and verification that a Consumer's complaint has been resolved, the Consumer's complaint shall be deemed closed for purposes of this Consent Order.

4.7 If within sixty (60) days of Respondent's receipt of the Consumer's complaint: (a) Respondent has not notified the Division that the Consumer's complaint has been resolved; (b)

Respondent has notified the Division that the Consumer's complaint has not been resolved; or (c) Respondent has notified the Division that the Consumer refuses Respondent's offer of Restitution, the Division shall forward such Consumer's complaint to the ADR Unit to reach a resolution of the complaint through binding arbitration. Respondent agrees herein to consent to this arbitration process and to be bound by the arbitrator's decision. Respondent further agrees to be bound by the immunity provisions of the New Jersey Arbitration Act, N.J.S.A. 2A:23B-14, and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. The Division shall notify in writing both the Consumer and Respondent's designate of the referral of the Consumer's complaint to the ADR Unit. Thereafter, the arbitration shall proceed in accordance with the ADR Guidelines (a copy of which is attached).

4.8 If Respondent fails or refuses to participate in the ADR program, the arbitrator may enter a default against Respondent. Unless otherwise specified in the arbitration award, Respondent shall pay all arbitration awards within thirty (30) days of the arbitrator's decision.

4.9 Respondent's failure or refusal to comply with the requirements of Sections 4.3 through 4.6, participate in the arbitration process or timely pay an arbitration award shall constitute a violation of this Consent Order.

4.10 If a Consumer fails or refuses to participate in the ADR program, that Consumer's complaint shall be deemed closed for the purpose of this Consent Order.

4.11 The Parties may agree in writing to alter any time periods or deadlines set forth in this Section.

4.12 Following the expiration of the one (1) year period, Respondent may request to continue the Consumer complaint resolution process for up to three (3) successive one (1) year periods, upon written notice by Respondent to the Division provided thirty (30) days prior to the

expiration of the initial or any subsequent one (1) year period. The Division may decline to grant Respondent's request, at its sole discretion for any reason.

## **5. SETTLEMENT PAYMENT**

5.1. On or before the Effective Date, Respondent shall pay the amount of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) (the "Settlement Payment"). The Settlement Payment comprises One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) in civil penalties, pursuant to N.J.S.A. 56:8-13.

5.2 The Settlement Payment shall be made by certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to the undersigned:

State of New Jersey  
Department of Law and Public Safety  
Division of Consumer Affairs  
CMT  
124 Halsey Street- 7<sup>th</sup> Floor  
Newark, New Jersey 07101

5.3 Upon making the Settlement Payment, Respondent shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Division pursuant to the terms herein.

## **6. GENERAL PROVISIONS**

6.1 This Consent Order is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of obligations and duties imposed by this Consent Order.

6.2 This Consent Order shall be governed by, and construed and enforced in accordance with, the laws of the State.

6.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Order and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Order.

6.4 This Consent Order sets forth the entire agreement between the Parties. Except as otherwise provided herein, this Consent Order shall be modified only by a written instrument signed by or on behalf of the Parties.

6.5 Except as otherwise explicitly provided in this Consent Order, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

6.6 If any provision of this Consent Order is held invalid or unenforceable by operation of law, the remaining terms of this Consent Order shall not be affected.

6.7 This Consent Order shall be binding upon the Respondent as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

6.8 This Consent Order shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Order be used to avoid compliance with this Consent Order.

6.9 This Consent Order is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Order shall constitute, or be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of Respondent; or (b) an admission by



Respondent that any of its acts or practices described in or prohibited by this Consent Order are unfair or deceptive or violate the CFA and/or the Furniture Regulations. Neither the existence of, nor the terms of this Consent Order, shall be deemed to constitute evidence or precedent of any kind except in: (a) any action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) any action or proceeding involving a Released Claim (as defined in Section 7) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

6.10 The Parties represent and warrant that an authorized representative of each has signed this Consent Order with full knowledge, understanding and acceptance of its terms and that the representative has done so with authority to act for and legally bind the respective Parties.

6.11 Unless otherwise prohibited by law, any signatures by the Parties required for filing of this Consent Order may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same Consent Order.

## **7. RELEASE**

7.1 In consideration of the injunctive relief, payments, undertakings, mutual promises and obligations provided for in this Consent Order and conditioned on Respondent making the Settlement Payment in the manner specified in Section 5, the Division hereby agrees to release Respondent from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which the Division could have brought prior to the Effective Date against Respondent for violations of the CFA and/or the Furniture Regulations, arising out of the Investigation as well as the matters specifically addressed in this Consent Order (the "Released Claims").

7.2 Notwithstanding any term of this Consent Order, the following do not comprise Released Claims: (a) private rights of action, provided however, that nothing herein shall prevent Respondent from raising the defense of set-off against a Consumer who has received Restitution; (b) actions to enforce this Consent Order; and (c) any claims against Respondent by any other agency or subdivision of the State.

## **8. PENALTIES FOR FAILURE TO COMPLY**

8.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Order or to seek sanctions for violations hereof or both.

8.2 The Parties agree that any future violations by Respondent of the injunctive provisions of this Consent Order, the CFA and/or the Furniture Regulations shall constitute a second or succeeding violation pursuant to N.J.S.A. 56:8-13 and that Respondent may be subject to enhanced civil penalties, as provided therein, upon a Court's finding that Respondent has committed a violation of the injunctive provisions of this Consent Order, the CFA and/or the Furniture Regulations.

## **9. COMPLIANCE WITH ALL LAWS**

- 9.1 Except as provided in this Consent Order, no provision herein shall be construed as:
- (a) Relieving Respondent of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as may hereafter be amended, or as granting permission to engage in any acts or practices prohibited by any such laws, regulations or rules; or
  - (b) Limiting or expanding any right the Division may otherwise have to obtain information, documents or testimony from Respondent pursuant to any State or Federal law, regulation or rule, as now constituted or as may hereafter be amended, or limiting or expanding any right Respondent may otherwise have

pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Division to obtain such information, documents or testimony.

**10. NOTICES UNDER THIS CONSENT ORDER**

10.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Division or Respondent pursuant to this Consent Order shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

For the Division:

Bureau Chief  
Office of Consumer Protection  
New Jersey Division of Consumer Affairs  
124 Halsey Street - 7<sup>th</sup> Floor  
P.O. Box 45025  
Newark, New Jersey 07101

For the Respondent:

James Ryan, Esq.  
Bailey Cavalieri, LLC.  
10 W. Broad Street, Suite 2100  
Columbus, "Ohio 43215

Tod H. Friedman, Esq.  
Chief Legal Officer  
4300 E. 5<sup>th</sup> Avenue  
Columbus, Ohio 43219

IT IS ON THE 30<sup>th</sup> DAY OF August, 2010 SO ORDERED.

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY

By: [Signature]  
THOMAS R. CALCAGNI, ACTING DIRECTOR  
DIVISION OF CONSUMER AFFAIRS

**THE PARTIES CONSENT TO THE FORM, CONTENT AND ENTRY OF THIS CONSENT ORDER ON THE DATES UNDER THEIR RESPECTIVE SIGNATURES.**

FOR THE DIVISION:

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY

By: [Signature]  
Gina M. Betts  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: August 25, 2010

124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

FOR THE RESPONDENT:

By: [Signature]  
James Ryan, Esq.  
Bailey Cavaleri, LLC.  
10 W. Broad Street, Suite 2100  
Columbus, Ohio 43215

Dated: August 23, 2010

By: [Signature]  
Jonathan Schottenstein, President  
Edward L. Cornell, Esq., VP & CO  
American Signature, Inc.  
4300 E. 5<sup>th</sup> Avenue  
Columbus, Ohio 43219

Dated: August 20, 2010